

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
Charles Porges, et al.	§	Confirmation No.: 9467
	§	
Serial No.: 10/712,895	§	Group Art Unit: 3768
	§	
Filed: November 12, 2003	§	Examiner: Winakur, Eric Frank
	§	
For: Method and Circuit for Indicating	§	Atty. Docket: TYHC:0118-2
Quality and Accuracy of Physiological	§	P0225S-02
Measurements	§	

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October 17, 2008
Date

/W. Allen Powell/
W. Allen Powell

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

On July 25, 2007, a Notice of Allowability and a Notice of Allowance and Fee(s) Due was mailed for the above-referenced application. Attached to the Notice of Allowability, the Examiner provided a statement of reasons for allowance. Specifically, the Examiner stated the following:

None of the prior art, either alone or in combination, teaches or suggests a system or monitor that includes an element to determine whether to display or not display an estimate of a physiological characteristic based on signals and their relationship to a plurality of sensor signal specification boundaries and to a plurality of monitor boundaries, in combination with the other claimed elements.

Notice of Allowability, page 2.

In reliance upon M.P.E.P. § 1302.14, Applicants note that the Examiner's Statement of Reasons for Allowance is merely the personal opinion of the Examiner as to why the Examiner believes the claims to be allowable. However, the Examiner's statement may not create an estoppel, as only an Applicant's statement may be used to create an estoppel. Indeed, the failure of an Applicant to comment on the Examiner's Statement of Reasons for Allowance should not be treated as acquiescence to the Examiner's reasons. Further, Applicants understand that each of the Examiner's statements should include at least (1) the major difference in the claims not found in the prior art of record, and (2) the reasons why that difference is considered to define patentably over the prior art if either of these reasons for allowance is not clear in the record. Accordingly, to the extent that the Examiner does not rely upon language actually used in a claim, to the extent that the Examiner misinterprets claim language, and to the extent that the Examiner misinterprets prior art, the Examiner's Statement of Reasons for Allowance is improper. Furthermore, Applicants realize that the Examiner's statement is not intended to state all of the reasons for allowance. Although Applicants agree that the present claims are allowable over the prior art of record, Applicants do not wish for the Examiner's reasons for allowance to be binding on Applicants in any manner, and it should not be inferred or presumed that Applicants acquiesced to the Examiner's statements. Accordingly, Applicants respectfully decline to accept the Examiner's Statement of Reasons for Allowance.

Respectfully submitted,

Date: October 17, 2008

/W. Allen Powell/

W. Allen Powell

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281-970-4545

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